

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

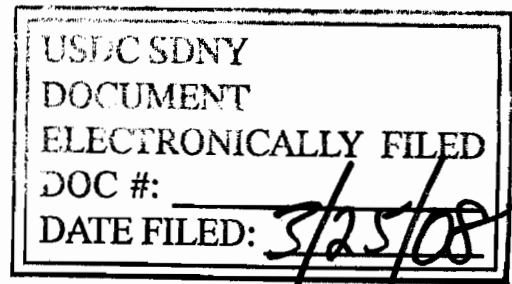
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AMERICAN GUARANTEE AND LIABILITY
INSURANCE CO.,

Plaintiff,

-against-

ALAN P. ROSEFIELDE,

Defendant.
-----X



07 Civ. 11273 (GEL)

ORDER

GERARD E. LYNCH, District Judge:


Defendant Alan P. Rosefielde moves to dismiss Count One of plaintiff American Guarantee and Liability Insurance Company's complaint, which seeks rescission of a legal malpractice insurance policy issued to Rosefielde, for failure to plead fraud with particularity as required by Rule 9(b), Fed. R. Civ. P. The motion will be denied.

Putting to one side whether, under New York law, a claim for rescission of an insurance policy requires proof of fraud or merely of a factual misstatement, plaintiff has satisfied the Rule 9(b) pleading standard. The complaint clearly identifies specific statements in Rosefielde's application for insurance that are alleged to be false, identifies the speaker and the occasion on which the allegedly false statements were made, and adequately specifies the basis for believing that the statements were false. The issues for discovery and trial are clearly identified.

The parties should proceed immediately with the filing of an answer, and the commencement of the discovery process. Chambers personnel will contact the parties promptly to arrange an initial scheduling conference.

SO ORDERED.

Dated: New York, New York
March 25, 2008


GERARD E. LYNCH
United States District Judge